Supreme Court, U. S.
FILED
MAY 23 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1302

JOHN T. DUNLOP, Secretary of Labor, and
CASPAR W. WEINBERGER, Secretary of Health,
Education, and Welfare,

Appellants,

v.

TURNER ELKHORN MINING COMPANY, et al.,

Appellees.

On Appeal from the United States District Court
for the Eastern District of Kentucky

BRIEF AMICUS CURIAE FOR THE UNITED MINE WORKERS OF AMERICA

JOSEPH A. YABLONSKI
WILLARD P. OWENS
900 Fifteenth Street, N.W.
Washington, D. C. 20005
Attorneys for Amicus

OF COUNSEL:
GAIL FALK
801 Union Building
Charleston, W. Va. 25301

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INTRODUCTION

The United Mine Workers of America submits this brief in support of appellants with the consent of counsel for both appellants and appellees.

Although appellants have presented two questions to the Court, this brief is addressed solely to the first, viz: whether § 411(c)(3) of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. § 921(c)(3), which

provides for compensation to miners with complicated pneumoconiosis whether or not the miner is functionally disabled, is consistent with the Constitution.

INTEREST OF AMICUS CURIAE

The United Mine Workers of America is a labor union that represents approximately 122,000 active and 90,000 retired coal miners. Eighty per cent of the working coal miners in the United States are members of the UMWA. The leadership and members of the UMWA were instrumental in securing passage of the Federal Coal Mine Health and Safety Act of 1969 and the Black Lung Benefits Act of 1972, which amended certain sections of Title IV of the 1969 Act. In addition, the UMWA has been involved for many years in efforts to improve workers' compensation programs in the coalfield states and in securing compensation benefits for its members. See *United Mine Workers* v. *Illinois State Bar Assn.*, 389 U.S. 217 (1967).

The constitution of the UMWA International Union provides for a special compensation fund in each district supported by a uniform compensation contribution paid out of the dues of all members.[1] In accordance with this provision of its constitution, the UMWA employs or retains attorneys who represent thousands of members and their survivors on federal black lung claims and on state workers' compensation claims.

The decision of the district court with respect to the constitutionality of § 411(c)(3) of the Act will have a serious adverse effect on thousands of UMWA members. It will require additional costly and arduous medical testing and

[1] Article XIII, Section 4 reads in part:

"Such compensation trust fund money shall be expended in all Districts uniformly only for expenses incurred assisting members in obtaining unemployment and workmen's compensation benefits, including black lung payments and, where possible, in assisting widows and dependents of former members."

increased litigation in the federal black lung claims of miners with medical proof that they suffer from complicated pneumoconiosis, a grave and advanced stage of coal mine workers' pneumoconiosis. It will take away a preventive health aspect of the Federal Coal Mine Health and Safety Act by depriving the Department of Labor of authority to notify miners suffering this advanced stage of the disease of their entitlements to benefits. It will bar the claims of widows and orphans of miners who suffered from complicated pneumoconiosis but who died in mine accidents or from other causes while working.

Appellants will concentrate on defending the action of Congress and their own interests as administrators of the program that Congress has established. The UMWA approaches the case as the representative of many of the miners, widows, and orphans who will be denied black lung benefits or who will encounter greater delay, expense, and discomfort in establishing their claims as a result of the lower court decision.

In addition, the UMWA enters this case with concern that the decision of the district court, if allowed to stand, may have a far-reaching and devastating impact on numerous provisions of state workers' compensation laws, because they may in turn be analyzed as irrebuttable presumptions depriving employers of due process of law. Underground coal mining causes a higher rate of occupationally related injury than any other major industry in this country.[2] As a result, coal miners and their union are grimly and inevitably concerned with the eligibility rules and procedures of state

[2] National Safety Council, *Accident Facts* 26 (1974). Underground coal miners suffer 35.44 disabling injuries per million worker hours as compared with 10.55 disabling injuries per million worker hours for industrial workers generally.

compensation programs.[3] The UMWA submits this brief amicus curiae and will submit a brief on the merits if jurisdiction is granted in order to assure that the broader ramification of this case for state compensation programs, as well as for the present and future of the federal black lung program, are fully presented to the Court.

THE CONSTITUTIONAL QUESTION IS SUBSTANTIAL

Complicated pneumoconiosis is an advanced form of coal mine workers' pneumoconiosis. It is diagnosed during life by opacities on an x-ray of a miner's lung which are larger than one centimeter in diameter. After death it is diagnosed by autopsy when a pathologist finds massive lesions in the lung larger than one centimeter in diameter caused by the accumulation of coal dust. In general, the complicated stage of pneumoconiosis develops only after a miner suffering from simple pneumoconiosis has had additional exposure to coal dust.[4]

Before enacting the Federal Coal Mine Health and Safety Act, Congress heard testimony that medical opinion was relatively unified on the following matters:

1. Complicated pneumoconiosis afflicts only a small proportion of coal miners.

2. Complicated pneumoconiosis ordinarily results in the total inability of a miner to engage in further coal mine work.

[3] For example, in West Virginia in fiscal year 1973, 20,647 claims were filed with the West Virginia Workmen's Compensation Fund for fatalities, injuries, and diseases suffered by coal miners. Table 19, West Virginia Workmen's Compensation Fund, *Annual Report for Year Ending June 30, 1974* (1975).

[4] Statements of Werner A. Laqueur, M.D., Paul Gross, M.D., Ira Higgins, M.D., Leon Cander, M.D., Hearings before the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, on S. 355, 91st Cong., 1st. Sess. Pt. 2, 695, 696, 760, 836-7, 857.

3. Complicated pneumoconiosis is ordinarily progressive. It continues to get worse even if the miner has no further exposure to coal dust.

4. Miners who suffer from complicated pneumoconiosis have a significantly shorter life expectancy than other miners as a result of their lung disease.[5]

Medical opinion continues to be relatively unified on these matters.[6]

Based on this medical information about complicated pneumoconiosis, Congress enacted § 411(c)(3), which provides that, when x-ray, autopsy, biopsy, or other medical evidence demonstrates that a miner is or was suffering from complicated pneumoconiosis, "there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis." In practical effect this provision means that a miner with x-ray, biopsy, or autopsy evidence of complicated pneumoconiosis may, without additional evidence, establish his eligibility for federal black lung benefits.

The district court ruled that § 411(c)(3) violates the coal operators' right to due process because it creates an irrebuttable presumption of total disability and forecloses any factfinding as to the effect of the disease on the individual miner's ability to work. In their jurisdictional statement, the Secretary of Labor and the Secretary of Health, Education, and Welfare stress that Congress did not create a genuine presumption in § 411(c)(3), but rather used the words "irrebuttable presumption" as a form of legislative shorthand to accomplish the fully constitutional purpose

[5] Statements of Eugene A. Creany, Esq., Werner A. Laqueur, M.D., William A. Stewart, M.D., Paul Gross, M.D., Ira Higgins, M.D., Leon Cander, M.D., Hearings on S. 355, *supra,* note 4, Pt. 1, 502, Pt. 2, 696, 720, 759-760, 840, 843-844, 846, 855, 857-858.

[6] *E.g.,* Morgan, *Respiratory Disease in Coal Miners,* 231 Journal of the American Medical Assn., at 1347 (March 31, 1975).

of awarding compensation to all miners who suffer from the complicated stage of pneumoconiosis. The UMWA is in full accord with that analysis of the statute.

Even assuming, however, that the district court could properly treat § 411(c)(3) as containing an irrebuttable presumption, the court erroneously held that provision unconstitutional.

The district court based its holding on the prior decisions of this Court in *Heiner* v. *Donnan,* 285 U.S. 312 (1932); *Stanley* v. *Illinois,* 405 U.S. 645 (1972); and *Vlandis* v. *Kline,* 412 U.S. 411 (1973). This Court has wrestled in those cases and others with the problem of determining when an irrebuttable presumption is an impermissible violation of due process. See also, *Bell* v. *Burson,* 402 U.S. 535 (1971); *U.S. Dept. of Agriculture* v. *Murry,* 413 U.S. 508 (1973); *Cleveland Board of Education* v. *LaFleur,* 414 U.S. 632 (1974). The line of cases identifying such irrebuttable presumptions lies at the intersection of equal protection and due process doctrine. This is an extremely important and sensitive area of law involving the essence of the legislative process, which creates categories and attaches certain rights, duties, or penalties to those categories. A vast array of legislative categories may be analyzed as irrebuttable presumptions even though they may not be labeled as such.

The district court's decision in this case is a departure from previous decisions of this Court because, as written, it stands for the proposition that every irrebuttable presumption, whether explicitly labeled so or not, is constitutionally defective. Moreover, it enters the area of compensation for occupational disease, where the intertwined legislative goals of prevention and prompt payment of benefits create the need for special forms of legislation, and it also touches upon the definition of "total disability," a highly subjective concept at best, bearing very different meanings from one government program to another. Yet the district court did not carefully analyze nor deeply consider these

problems; its entire reasoning on the subject is contained in a single paragraph. The court made no distinction between the words Congress used to accomplish its purpose and the actual content of its purpose. No prior decision of this Court suggests that there is any constitutional reason why Congress cannot require a coal operator to pay compensation benefits to any employee who has developed the complicated stage of pneumoconiosis as a result of his coal mine employment. This is a rational and humane provision, which this Court should restore to full operation at an early date.

Furthermore, the decision below has wide ramifications for many areas of the law besides the black lung benefits specifically at issue here. That decision, if affirmed, would permit the judicial invalidation of a host of similar legislative categories on the ground that they are unconstitutional irrebuttable presumptions. It could be extended to strike down the schedule benefits that appear in the workers' compensation laws of every American jurisdiction,[7] for there is no conceptual difference between providing a set level of benefits upon proof that a worker has lost a limb and providing benefits upon proof that a portion of a worker's lung has been choked off by the accumulation of coal dust. Compensation for disfigurement, which is authorized by statute in 41 states and by judicial ruling in five more,[8] would also come immediately under a constitutional cloud. This Court should review the decision of the district court in order to insure that other courts will not follow its lead in applying the irrebuttable presumption doctrine to strike down long-standing laws designed to ease the burdens of injured workers.

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[7] 2 Larson's *Workmen's Compensation* § 58.10. See also § 8(c) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 908(c), which is jeopardized by the lower court's decision.

[8] 2 Larson's *Workmen's Compensation,* §§ 58.30, 58.32.

CONCLUSION

For the foregoing reasons, probable jurisdiction of this appeal should be noted.

Respectfully submitted,

JOSEPH A. YABLONSKI
WILLARD P. OWENS
900 Fifteenth Street, N.W.
Washington, D. C. 20005

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GAIL FALK
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